



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN: 3206-AO04

Scheduling of Annual Leave by Employees Determined Necessary to Respond to Certain National Emergencies

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management is issuing interim regulations to assist agencies and employees responding to the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak and for future national emergencies. The regulations provide that employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their work to support the nation during a national emergency will have their excess annual leave deemed to have been scheduled in advance and subject to leave restoration.

DATES: The interim regulations are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public

is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606-2858 or by e-mail at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: On March 13, 2020, President Trump declared a “National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak” (85 FR 15337 at <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>). Because of the unprecedented outbreak and spread of this virus and the efforts toward response and recovery, many Federal agencies and employees have been, and for the foreseeable future will continue to be, engaged in work vital to our nation and to the pandemic response. Under current rules, some of these employees will be unable to use sufficient annual leave to avoid exceeding the limit on annual leave that may be carried over into the next year. The Office of Personnel Management (OPM) is issuing interim regulations to assist such agencies and employees and to address any similar situations during future emergencies.

OPM issued CPM 2020-09 on June 18, 2020, to remind agencies and employees of the normally applicable rules for annual leave and various paid time off categories. We reminded agencies to work with their employees to ensure that they continue to take any annual leave or other paid time off before it expires. For further guidance on the normal applicable rules, agencies and employees may review the guidance at <https://www.chcoc.gov/content/annual-leave-and-other-paid-time-guidance>

For most employees, the maximum annual leave that may be carried into the next leave year is 30 days (240 hours). Currently, an agency may restore annual leave that was forfeited

due to an exigency of the public business or sickness of the employee only if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year (typically late November or early December). Any annual leave scheduled after that date will be forfeited if not used by the final day of the leave year.

The regulations provide that, once the agency head or designee has made appropriate determinations, employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their work to support the nation during a national emergency will have their excess annual leave deemed to have been scheduled in advance and subject to leave restoration.

The procedures established by these interim regulations are similar to those established in previously rescinded 5 CFR 630.310 for employees whose services were deemed essential to the Year 2000 (Y2K) computer conversion and in current 5 CFR 630.311, for employees whose services were deemed essential to the emergency response in the aftermath of the September 11, 2001, terrorist attacks, which are being rescinded by this interim rule. These interim regulations differ from the previous regulations in that they allow this authority to be used not only for the current national emergency related to the COVID-19 outbreak, but also for certain future national emergencies for which OPM issues notification permitting use of this authority. These regulations allow agencies to respond quickly to the annual leave restoration needs of their employees who are responding to a national emergency.

Rescinding Regulations

OPM is rescinding 5 CFR 630.311, Scheduling of annual leave by employees determined necessary to respond to the “National Emergency by Reason of Certain Terrorist Attacks.” The regulations at 5 CFR 630.311 provided that the national emergency following the September 11,

2001 terrorist attacks was deemed to be an exigency of the public business for the purpose of restoring annual leave to any employee who forfeited annual leave under 5 U.S.C. 6304 because the agency determined the employee's services were required in response to that national emergency. The practical purpose of the regulations was to address the statutory and regulatory requirements for advanced scheduling of annual leave for leave restoration purposes.

The statute requires that, in order for annual leave to be eligible for restoration because of an exigency of the public business, it must have been scheduled in advance. (See 5 U.S.C. 6304(d)(1)(B).) The implementing regulations at 5 CFR 630.308(a) require annual leave to be scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year in order to meet the statutory requirement for being "scheduled in advance" unless 5 CFR 630.308(b) applies.

These requirements were difficult to meet in the aftermath of the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon. The terrorist attacks occurred on September 11, 2001, which was very late in the 2001 leave year and only a couple of months before December 1, 2001, the date by which employees were required to schedule their annual leave subject to forfeiture in order for it to be considered for restoration. Many employees were involved in the response to that national emergency, and it was clear that their involvement would preclude their use of annual leave before January 12, 2002, which was the end of the 2001 leave year. Because it was known in advance that it was not going to be possible for such employees to be absent on leave, OPM published those interim regulations, which directly addressed this scheduling requirement and deemed that any annual leave forfeited as a result of an employee's work on the national emergency would be deemed to have been scheduled in

advance for the purpose of satisfying the scheduling requirements at 5 U.S.C. 6304(d)(1)(B) and 5 CFR 630.308.

Although the national emergency by reason of the terrorist attacks is still in effect (see 84 FR 48545, Sept. 13, 2019), employees performing work towards that national emergency are now better able to schedule and take annual leave. Because the regulation was issued to address the difficulty of employees needing to be in a constant work status and their agencies not being able to approve any of their requests to schedule and take annual leave, and these employees have since been able to schedule and take annual leave, § 630.311 is no longer needed. Therefore, going forward, the normal requirements for restoration of annual leave for an exigency of the public business will apply to any employee still performing work on activities related to the “National Emergency by Reason of Certain Terrorist Attacks.” In order for an agency to consider restoring annual leave to an employee performing such work, the employee must have followed the leave scheduling requirements of 5 U.S.C. 6304(d)(1)(B) and 5 CFR 630.308 (i.e., the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year) and the agency must have determined that there was an urgent need for the employee to perform work related to the national emergency such that the employee’s annual leave was cancelled.

Scheduling of Annual Leave by Employees Determined Necessary to Respond to Certain National Emergencies

Section 6304 of title 5, United States Code, establishes limitations on the amount of annual leave an employee may carry over from one leave year to the next. Most employees may carry over no more than 240 hours of annual leave to the next leave year. However, 5 U.S.C. 6304(d)(1) provides that excess annual leave lost because of “exigencies of the public business

when the annual leave was scheduled in advance ... shall be restored to the employee.” For the purpose of Federal leave administration, an exigency of the public business occurs when the employing agency determines there is a pressing need for an employee’s service, and the employee cannot use his or her excess annual leave because there are no other practical alternatives available to accomplish the work by a given deadline.

At certain times when the President declares a national emergency, the services of many employees in Federal agencies will be essential to respond to that national emergency. As a result, many of these employees will be faced with the possible forfeiture of “use or lose” annual leave because they must remain on the job to work towards the fulfillment of the agencies’ missions during the critical response period. In the normal course, and in the absence of this new regulation, in order for annual leave to be considered for restoration, it must have been scheduled before the start of the third biweekly pay period prior to the end of the leave year. This requirement means that agencies and their employees would be faced with the administrative burden of scheduling, canceling, and restoring such leave for each of these employees at a time when all available attention and energy should be focused on the national emergency.

As referenced above, OPM has previously issued regulations such as 5 CFR 630.311, Scheduling of annual leave by employees determined necessary to respond to the “National Emergency by Reason of Certain Terrorist Attacks,” and the previously rescinded 5 CFR 630.310, Scheduling of annual leave by employees determined necessary for Year 2000 computer conversion efforts. Both of these prior regulations deemed the national emergency and the Y2K circumstances exigencies of the public business for purposes of restoration of annual leave. The regulations also deemed annual leave that was forfeited for these reasons to have been scheduled in advance. Those regulations were issued in response to specific emergencies.

However, going forward, OPM has determined that it would be prudent to issue a generally applicable regulation to provide OPM with the flexibility to respond quickly to a future national emergency, rather than promulgate new rules for each emergency, resulting in potential delays in implementation.

To accomplish this goal, OPM is replacing the reserved 5 CFR 630.310 with a new 5 CFR 630.310 entitled “Scheduling of annual leave by employees determined necessary to respond to certain national emergencies.” Below we provide an explanation of the provisions in interim 5 CFR 630.310. Hereafter in this SUPPLEMENTARY INFORMATION, references to statutory provisions in title 5, United States Code, and to regulatory provisions in title 5, Code of Federal Regulations, will generally be referred to by section number without restating the full title 5 reference.

OPM’s Authority to Initiate Restored Annual Leave Streamlined Process

In order to initiate a streamlined process to restore forfeited annual leave, the Director of OPM has the authority to respond to a specific national emergency as declared by the President. OPM’s central response will allow agencies to restore annual leave expeditiously. Under this regulation, OPM will notify agencies that they may utilize this authority to restore annual leave to employees whose work is considered essential for the particular national emergency.

Under the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the President may pronounce a national emergency when he or she considers it appropriate. Once the President has declared a national emergency, the President’s declaration is published in the Federal Register.

Paragraph (a)(1) of the new § 630.310 provides that the Director of OPM may deem a specific national emergency as declared by the President under the National Emergencies Act to be an exigency of the public business for the purpose of restoring annual leave forfeited under

5 U.S.C. 6304(d)(1)(B) and will notify agencies of this decision. Since the passage of the National Emergencies Act, the President has declared various national emergencies. However, few have required a sustained response from large portions of the civilian workforce, which would preclude many employees from being able to use their annual leave to avoid forfeiture. For example, some national emergencies may entail a response of the Armed Services rather than the civilian workforce. Therefore, only certain national emergencies will rise to the level of being a national emergency that will also qualify as an exigency of the public business under this regulation.

As noted above, for those emergencies that qualify under such circumstances, this generally applicable regulation will provide agencies with flexibility to permit restoration of annual leave expeditiously. The OPM Director expects to make a determination pursuant to these regulations when a certain national emergency as declared by the President will require the service of Federal employees on a large scale, such that employees will be unable to use annual leave to prevent forfeiture of the leave. Only when the Director of OPM makes such a determination and provides notice to agencies of such determination may agencies use the authority.

Determinations and Communication by Agency Head or Designee

Paragraph (a)(2) of the new § 630.310 requires each agency head to take proactive steps to establish procedures and policies necessary to administer this annual leave restoration authority and to update them as necessary so that they are available for immediate use during a declared national emergency. The interim regulations require all agency heads to create these policies and procedures as part of their emergency planning, meaning that agencies must establish such policies and procedures to be available for use during any national emergency for

which OPM issues a notice under paragraph (a)(1). In this way, all agencies will be prepared to immediately use this authority for any and all future national emergencies for which it may be necessary.

As provided in paragraph (b), once the Director of OPM informs agencies that it has deemed a certain national emergency an exigency of the public business for purposes of the restoration of annual leave, each agency head (or designee), in his or her sole and exclusive discretion, must perform the following actions. The agency head (or designee) will be required to identify any employees covered under this annual leave restoration authority because they are affected by the exigency of the public business described in the OPM notification, due to their services being considered essential to the response to the national emergency, and they therefore cannot use their annual leave. This agency designation is necessary because the employees whose work is considered essential in responding to a national emergency will vary depending on the nature of the emergency. For example, for the “National Emergency by Reason of Certain Terrorist Attacks,” the services of certain intelligence analysts may have been considered essential to the emergency response, whereas for the “National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak,” the services of employees such as physicians, nurses, certain clinical laboratory scientists, and public health specialists may be more likely to be designated as essential to the emergency response. The agency head (or designee) may make such a determination for groups of employees or for individual employees. Once the agency head (or designee) has made such a determination, the agency head (or designee) must inform the designated employees or group of employees in writing of this determination and its application to them. It is critical that such employees know that their services have been designated as essential during the emergency because the employees need to

know that the normal requirement to schedule annual leave in writing before the start of the third biweekly pay period prior to the end of the leave year, as required by § 630.308, is not applicable during the designated time period. Employees also need to understand how the other provisions in § 630.310 apply to them.

The regulations provide that the agency's determination may not be made by any official whose leave would be affected by the decision.

Annual Leave Deemed Scheduled in Advance

Paragraph (c) of the new § 630.310 simplifies the procedures for restoring annual leave forfeited as a result of the national emergency. In many instances, as it is known in advance that it is not possible for designated employees involved in the national emergency to be absent on annual leave, the scheduling and canceling of such leave places an unnecessary administrative burden on the employees and the agencies involved. Paragraph (c) simplifies the administrative process by deeming annual leave forfeited in a leave year as a result of a national emergency for which OPM issues a notification under paragraph (a) to have been scheduled in advance for the purpose of satisfying the requirements in 5 U.S.C. 6304(d)(1)(B) and § 630.308. Therefore, annual leave forfeited at the end of a leave year because of the national emergency and the need for employees' services during the national emergency will be restored under 5 U.S.C.

6304(d)(1)(B) and placed in a separate restored leave account.

Time Limit for Use of Restored Leave

Paragraph (d) of the new § 630.310 parallels the current § 630.306 and provides the rules governing the timeframes in which an employee must schedule and use annual leave forfeited under these regulations. Employees who already have large restored annual leave accounts and employees remaining in positions performing work that is essential to respond to the national

emergency for an extended period of time may accrue large amounts of annual leave in their accounts. Under the current regulations, the affected employees would have to schedule and use all of the restored annual leave by the end of the leave year ending 2 years after the termination date of the exigency of the public business. As a result, employing agencies would have to deal with the consequence of employees using sizeable amounts of leave within 2 to 3 years after the end of the national emergency. At the same time, annual leave that accrues during that 2- to 3-year period would routinely create a “use or lose” situation.

To help alleviate this situation, § 630.310(d) provides that annual leave restored as a result of the exigency of public business caused by the national emergency will have the same time limits for restoration as are currently used for Department of Defense (DoD) employees in installations undergoing closure or realignment. (See § 630.306(b).) A full-time employee will be required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) as the termination date of the exigency of the public business. The agency will extend that period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof. A part-time employee will be required to schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency. The agency will extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

We are also making a concurrent change to the regulations related to uncommon tours of duty at § 630.210 by adding a new paragraph (d) to clarify that in applying sections of the back

pay regulations at § 550.805(g), the regulations at § 630.306(b) for DoD installations undergoing closure, and these interim regulations to employees on such tours of duty, the referenced number of hours for full-time employees (416 hours and 208 hours) are to be proportionally adjusted based on the percentage amount by which the number of hours in the uncommon tour of duty exceeds the number of hours in a regular full-time tour of duty. For example, if the uncommon tour of duty consists of 120 hours in a biweekly pay period instead of the 80 hours for a regular full-time employee, the percentage adjustment would be 50 percent $[(120/80) - 1]$; accordingly, 416 hours would be converted to 624 hours and 208 hours would be converted to 312 hours. Section 630.310(d)(1) references this new regulation regarding employees on uncommon tours of duty at § 630.210(d).

Treatment of Current Restored Leave Accounts

Paragraph (e) of the new § 630.310 recognizes that some employees who will be involved in responding to the exigency of the public business determined by the Director of OPM will already have an “active” restored leave account—*i.e.*, an account of restored annual leave that was established under other conditions permitting restoration of annual leave under 5 U.S.C. 6304(d). We are including paragraph (e) to prevent such employees from forfeiting leave in their restored leave accounts. Because there is no authority to restore previously restored annual leave, employees with restored annual leave who cannot take annual leave because their services are considered essential to the national emergency response would forfeit any previously restored annual leave subject to forfeiture at the end of the leave year. The interim regulation at § 630.310(e) alleviates this problem by canceling the time limitation for using active restored annual leave for the entire period during which employees’ services are determined to be essential to respond to the national emergency. When coverage for an employee

under this section ends due to the termination date of the exigency of the public business fixed by the agency, as described in paragraph (f)(2), a new time limit will be established under § 630.310(d) for using all restored leave available to the employee under 5 U.S.C. 6304(d).

Termination of the Exigency as It Affects Employees

Paragraph (f) of the new § 630.310 provides parameters for monitoring the agency response to the declared national emergency and conditions under which the provisions of § 630.310 will no longer be applicable to specific employees or groups of employees and the normal annual leave forfeiture rules will again apply to them. Employees whose services are required in response to the national emergency will all, at some point, generally be able to again schedule and take annual leave following the normal procedures in § 630.308(a). Therefore, it is incumbent on the agency to determine, for any exigency of the public business, when any employee is no longer affected by the exigency to the extent that the employee cannot schedule and take annual leave. The regulations therefore lay out when the national emergency as an exigency of the public business must be terminated.

Section 630.310(f)(1) requires the agency head (or designee) to continually monitor the agency response to the national emergency and determine whether the services of individual employees or groups of employees continue to be required in response to the emergency such that annual leave may not be scheduled according to the normal procedures described in § 630.308(a). This is a necessary role that the agency head (or designee) must perform in order to use this authority for its intended purpose.

Section 630.310(f)(2) makes the agency head (or designee) responsible for fixing a specific date as the termination date of the exigency of the public business for each affected employee or group of employees based on application of provisions in paragraphs (i) through

(v). The exigency of the public business as it affects an individual employee or group of employees must be terminated at the earliest occurrence of one of a series of possible events. The exigency may end when the President declares an end to the national emergency. It may also end when the Director of OPM deems the national emergency to no longer be an exigency of the public business for the purposes of this regulation. As time passes, it can be that the services of fewer and fewer employees are required in response to the national emergency. Therefore the exigency of the public business may also end when the agency head (or designee), in his or her sole and exclusive discretion, determines that the employee's or group of employees' services are no longer essential to the response to the national emergency or that such employees can once again adhere to the normal leave requesting procedures at § 630.308(a). For example, a hospital struggling to treat patients affected by COVID-19 may require the services of all hospital employees in response to the need. As operations go back to normal, the agency head (or designee) could determine the specific date that operations are back to normal, and a group of cardiologists are able to request leave under normal conditions as of a date specified by the agency head (or designee) and declare the exigency to no longer apply to those employees. However, the agency head (or designee) may determine that the services of pulmonary specialists may still be required and thus the exigency still applies to these employees. Because the continual and ongoing need for employees' services such that they cannot schedule annual leave according to the normal procedures will eventually end, the regulations provide that the exigency terminates on the day that is 12 months after the national emergency has been declared, except that the agency head (or designee), in his or her sole and exclusive discretion, may extend this deadline annually by an additional 12 months. Under no circumstances may an agency grant more than two 12-month extensions under this paragraph in

connection with any national emergency, thus this authority may not be applied for more than a total of 3 years from the initial date of the declared emergency. The reason for this termination at the 3-year anniversary is that there is already another authority for an extended exigency of the public business at § 630.309 that provides authority for an exigency that lasts more than 3 calendar years and meets other requirements. Finally, the regulations provide that the exigency terminates when an employee whose services were determined to be essential for response to the national emergency moves to a position in which the employee is not performing services considered essential to responding to the national emergency.

Section 630.310(f)(3) requires the agency head (or designee) to inform both the affected employees and the agency payroll provider in writing of this termination date. Payroll providers need to know the date of the end of the exigency in order to set the date when the restored annual leave will expire. The affected employees also need to know this date so they can plan to use the restored annual leave before it expires.

Employees No Longer Involved with the National Emergency

Paragraph (g) of the regulations allows an agency to consider restoration of annual leave forfeited at the end of the leave year to an employee whose involvement in the national emergency ends during the leave year if the agency determines that there is a correlation between the lack of advance scheduling and the employee's services in response to the national emergency.

As noted earlier, § 630.308 currently requires that before forfeited annual leave may be considered for restoration, the leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. We are concerned about the possible consequences of requiring advance scheduling for an employee or group of employees

when the national emergency to which affected employees have been responding terminates (as described in paragraph (f)) during the latter portion of a leave year. It is possible that such employees would have annual leave in excess of the maximum limitation but would still be unable to schedule it in time for it to be restored.

OPM believes such annual leave may be considered for restoration. Section 630.310(g) requires affected employees to make a reasonable effort to comply with the advance scheduling requirement in § 630.308(a). However, the head of an agency (or designee), in his or her sole and exclusive discretion, may exempt an employee from the advance scheduling requirement if the employee can show that he or she was involved in work necessary to respond to the national emergency during the leave year and was unable to comply with the scheduling requirement under § 630.308(a) because of circumstances beyond his or her control. Because the agency may determine that there was sufficient time for the employee to schedule and use annual leave before the end of the leave year, this provision does not guarantee that excess annual leave will be restored.

Miscellaneous Technical Amendments

OPM is amending § 630.306(a) to add a reference to this regulation. OPM is also amending § 630.308(a) to remove the reference to the rescinded § 630.311.

Waiver of Notice of Proposed Rule Making

OPM is issuing this rulemaking as an interim final rule and has determined that, under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), it would be impracticable and contrary to the public interest to delay a final regulation until a public notice and comment process has been completed. OPM also is waiving general notice of proposed rulemaking under the Civil Service Reform Act's parallel rulemaking provision, 5 U.S.C. 1103(b)(3), because the

interim rule is temporary in nature and necessary to be implemented expeditiously as a result of an existing emergency, as well possible unanticipated future emergencies.

The conclusion of a public notice and comment period before the rule is finalized would be impracticable because it would impede due and timely execution of the functions of OPM, employing agencies, and payroll providers.

In order for the streamlined restoration process to occur, the regulations require agencies to establish internal policies and procedures before using this new authority. For larger agencies, policies must be established at the headquarters level and then communicated to component levels. Significant changes to personnel processing also may be required. After implementing policies are established, the agency head (or designee) needs to identify all affected employees and communicate to those employees that they are subject to this new authority and the scheduling requirement does not apply to them. All this must be done prior to the November 21, 2020, scheduling requirement.

There was insufficient time from the President's declaration of a national emergency in response to the COVID-19 public health crisis on March 13, 2020, for OPM to complete a notice and comment rulemaking process in time for agencies, payroll providers, and employees to prepare for the rule in advance of the November 21, 2020, scheduling requirement. In addition, OPM's pay and leave policy resources have been engaged during the same period in implementing the pay and leave requirements of the Families First Coronavirus Response Act (Public Law 116-127) and the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136).

The conclusion of a public notice and comment period before the rule is finalized would also be contrary to the public interest because it would result in serious damage to important

interests. Implementing the regulation will be resource-intensive for agencies. Requiring agencies to wait until the conclusion of public notice and comment procedures to implement the regulation under a shorter deadline would be disruptive to agencies' missions during a national emergency, which will have a corresponding effect on the public.

Many employees are unable to take annual leave because they are required to support their agency's mission-related response to COVID-19. Because employees may not take annual leave, they are also not contemplating scheduling such leave because the agency needs employees to continue to support vital work-related functions related to the national emergency. In order to alleviate this burden on agencies and employees, this interim regulation provides that, upon the agency's determination, an employee would not need to meet the normal scheduling requirements under 5 CFR 630.308 in order to qualify for the restoration of any forfeited annual leave.

For the 2020 leave year, the date by which use or lose annual leave must be scheduled is November 21, 2020. Any employee to which these regulations would apply will need to know well in advance of this scheduling date that they are not required to schedule their annual leave before that date and may instead focus on their mission and required work directly related to COVID-19.

In addition, OPM has determined that extending the regulation to address potential future emergencies, and not only COVID-19, meets the above criteria for a waiver. The processes that the regulation outlines for potential future emergencies are the same as those that OPM followed in the two prior cited emergencies and that OPM intends to follow during COVID-19. The regulations engage agencies in contingency planning for future such instances and describe the process that OPM intends to follow in such instances. Only at the time of any future national

emergency do the regulations require a determination by the OPM Director that a particular emergency is an exigency of the public business. The comment period noted above will enable OPM to consider any necessary changes for future emergencies in the final rule.

Accordingly, in order to give practical effect to these regulations, I find that good cause exists to waive the general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b)(B). The interim final rule is temporary in nature, and expeditious timing is required because of the circumstances facing agencies during the COVID-19 emergency. OPM will promulgate a final rule as soon as practical after receiving public comments on the interim final rule.

Waiver of Delay in Effective Date

OPM is waiving the 30-day delayed effective date, and making this rule effective on the date of publication, because under 5 U.S.C. 553(d)(1), this is “a substantive rule which grants or recognizes an exemption or relieves a restriction” to permit the streamlined restoration of forfeited annual leave. In addition, I find, under 5 U.S.C. 553(d)(3), that good cause exists for making this rule effective in fewer than 30 days—i.e., effective on the date of publication—because as described above, an immediate effective date is necessary to minimize harm and disruption to employees, agencies, and payroll providers, and because a delayed effective date is not necessary to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. An immediate effective date will give affected employees the benefit of these new provisions as quickly as possible.

Executive Order 13563 and Executive Order 12866

This rule has been designated a “significant regulatory action” and has been reviewed by the Office of Management and Budget in accordance with E.O. 13563 and 12866.

Executive Order 13771

This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

Paperwork Reduction Act Requirements

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. chapter 63 as follows: Subparts A through E issued under 5 U.S.C. 6133(a) (read with 5 U.S.C. 6129), 6303(e) and (f), 6304(d)(2), 6306(b), 6308(a) and 6311;

subpart F issued under 5 U.S.C. 6305(a) and 6311 and E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G issued under 5 U.S.C. 6305(c) and 6311; subpart H issued under 5 U.S.C. 6133(a) (read with 5 U.S.C. 6129) and 6326(b); subpart I issued under 5 U.S.C. 6332, 6334(c), 6336(a)(1) and (d), and 6340; subpart J issued under 5 U.S.C. 6340, 6363, 6365(d), 6367(e), 6373(a); subpart K issued under 5 U.S.C. 6391(g); subpart L issued under 5 U.S.C. 6383(f); subpart M issued under sec. 2(d), Pub. L. 114–75, 129 Stat. 641 (5 U.S.C. 6329 note); and subpart P issued under 5 U.S.C. 6329c(d); and subpart Q issued under 5 U.S.C. 6387.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

§ 630.210 [Amended]

2. Amend § 630.210 by adding paragraph (d) to read as follows:

§ 630.210 Uncommon tours of duty.

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(d) In applying §550.805(g) of this chapter, and §§ 630.306(b), and 630.310(d), the referenced number of hours for full-time employees (416 hours and 208 hours) shall be proportionally adjusted based on the percentage amount by which the number of hours in the uncommon tour of duty exceeds the number of hours in a regular full-time tour of duty. For example, if the uncommon tour of duty consists of 120 hours in a biweekly pay period instead of the 80 hours for a regular full-time employee, the percentage adjustment would be 50 percent $[(120/80) - 1]$; accordingly, 416 hours would be converted to 624 hours and 208 hours would be converted to 312 hours.

Subpart C—Annual Leave

3. Amend § 630.306 by revising paragraph (a) to read as follows:

§ 630.306 Time limit for use of restored annual leave.

(a) Except as otherwise authorized under paragraphs (b) and (c) of this section, § 630.310(d), or other regulation, annual leave restored under 5 U.S.C. 6304(d) must be scheduled and used not later than the end of the leave year ending 2 years after:

(1) The date of restoration of the annual leave forfeited because of administrative error;

or

(2) The date fixed by the agency head, or his or her designee, as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or

(3) The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.

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4. Amend § 630.308 by revising paragraph (a) to read as follows:

§ 630.308 Scheduling of annual leave.

(a) Except as provided in paragraph (b) of this section and § 630.310, before annual leave forfeited under 5 U.S.C. 6304 may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

* * * * *

5. Add § 630.310 to read as follows:

§ 630.310 Scheduling of annual leave by employees whose work is essential to respond to certain national emergencies.

(a)(1) The Director of OPM may deem a specific national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601, *et seq.*) to be an exigency of the

public business for the purpose of restoring forfeited annual leave under 5 U.S.C. 6304(d)(1)(B) and will notify agencies in writing when this decision is made.

(2) The head of each agency is responsible for the proper administration of this authority. All heads of agencies are required to establish and periodically update (as necessary) procedures to administer this authority so that these policies are in place and immediately available for use any time the Director of OPM notifies agencies of a determination under paragraph (a)(1) of this section.

(b)(1) Once the Director of OPM has issued a notification to agencies under paragraph (a)(1), the head of each agency (or designee) must, in his or her sole and exclusive discretion, do the following:

(i) Make determinations identifying the specific employees or groups of employees who are performing services that are essential in responding to the national emergency designated as an exigency of the public business and who are thus qualified for coverage under this section; and

(ii) Inform covered employees in writing of any such determination and its application to them.

(2) A determination under paragraph (b)(1)(i) of this section may not be made by any official whose leave would be affected by the determination.

(c) For any employee determined under paragraph (b) of this section to be covered under this section who forfeits annual leave under 5 U.S.C. 6304(d)(1)(B) at the beginning of a leave year, the forfeited annual leave is deemed to have been scheduled in advance for the purpose of 5 U.S.C. 6304(d)(1)(B) and § 630.308.

(d) With respect to annual leave forfeited under paragraph (c) of this section, the annual leave must be restored under 5 U.S.C. 6304(d)(1)(B) subject to the following time limits:

(1) A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) under paragraph (f)(2) of this section as the termination date of the exigency of the public business. The agency must extend this period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

Note 1 to paragraph (d)(1): For an employee on an uncommon tour of duty, the conversion rules in § 630.210(d) regarding the referenced number of hours for full-time employees (416 hours and 208 hours) must be applied.

(2) A part-time employee must schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) under paragraph (f)(2) of this section as the termination date of the exigency of the public business. The agency must extend this period by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.

(e) The time limits established under paragraphs (d)(1) and (d)(2) of this section for using restored annual leave accounts shall not apply for the entire period during which an employee's services are determined by the agency to be essential for the response to the national emergency. When coverage under paragraphs (b) and (c) of this section ends due to the termination date of the exigency of the public business fixed by the agency under paragraph (f)(2), a new time limit

will be established under paragraph (d) of this section for all annual leave restored to an employee under 5 U.S.C. 6304(d).

(f)(1) The agency head (or designee) must continually monitor the agency response to the national emergency and determine whether the services of individual employees or groups of employees continue to be essential for the response to the emergency such that annual leave may not be scheduled according to the normal procedures described in § 630.308(a).

(2) The agency head (or designee) must fix a date as the termination date of the exigency of the public business for each employee or group of employees as provided in this paragraph. The exigency of the public business as it affects an individual employee or group of employees must be terminated on the date one of the following events occurs, whichever is earliest:

- (i) When the President declares an end to the national emergency;
- (ii) When the Director of OPM deems the national emergency to no longer be an exigency of the public business for purposes of this authority;
- (iii) When the agency head (or designee), in his or her sole and exclusive discretion, determines that the services of an employee or group of employees are no longer essential to the response to the national emergency or that such employees are able to follow the normal leave scheduling procedures in § 630.308(a);
- (iv) On the day that is 12 months after the national emergency has been declared, an agency head (or designee), in his or her sole and exclusive discretion, may extend this deadline annually by an additional 12 months; under no circumstances may an agency grant more than two 12-month extensions under this paragraph in connection with any national emergency (however, § 630.309 may apply in the case of an extended exigency); or

(v) When an employee whose services were determined to be essential during the national emergency moves to a position not involving services determined by the agency to be essential to the response to the national emergency.

(3) The agency head (or designee) must inform both the affected employees and the agency payroll provider in writing of the termination date as determined in paragraph (f)(2) of this section.

(g) When the agency head (or designee) fixes a termination date of the exigency of the public business under paragraph (f) of this section, each affected employee must make a reasonable effort to comply with the scheduling requirement in § 630.308(a). The head of the agency (or designee), in his or her sole and exclusive discretion, may exempt such an employee from the advance scheduling requirement in § 630.308(a) if coverage under paragraphs (a) and (b) of this section terminated during the leave year and if the head of the agency (or designee) determines that the employee was unable to comply with the advance scheduling requirement because of circumstances beyond the employee's control.

§ 630.311 [Removed]

6. Remove § 630.311.